

OCT 07 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MITCHELL DAVID GOLD,

Defendant - Appellant.

No. 02-50418

D.C. No. CR-01-00150-DOC-1

ORDER and MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MITCHELL DAVID GOLD,

Defendant - Appellant.

No. 02-50420

D.C. No. CR-01-00228-DOC-1

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted June 14, 2004**

Before: HALL, LEAVY and FISHER, Circuit Judges.

The panel has voted to grant the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing is granted, and the petition for rehearing en banc is denied.

The motion to stay the mandate is denied as moot.

The Memorandum Disposition filed June 21, 2004, is WITHDRAWN and replaced with the following Memorandum Disposition:

Mitchell David Gold appeals his guilty-plea convictions and 97-month sentence for mail fraud, in violation of 18 U.S.C. § 1341, and money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Gold has filed a brief stating that there are no grounds for relief, and a motion to withdraw as counsel of record. Gold has filed a pro se supplemental opening brief.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have conducted an independent review of the briefs and record pursuant to *Penson v. Ohio*, 488 U.S. 75, 83-84 (1988). We affirm the convictions.

We remand the sentence. The Sentencing Guidelines are no longer mandatory and we cannot determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory. *See United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). On remand, therefore, the district court should consider in its discretion appellant's sentence in light of *Ameline*.

Counsel's motion to withdraw as counsel on appeal is denied.

The convictions are **AFFIRMED**, and the sentence is **REMANDED**.